

**ST 00-28**

**Tax Type: Sales Tax**

**Issue: Reasonable Cause on Application of Penalties**

**DEPARTMENT OF REVENUE  
STATE OF ILLINOIS  
OFFICE OF ADMINISTRATIVE HEARINGS  
CHICAGO, ILLINOIS**

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**DEPARTMENT OF REVENUE  
STATE OF ILLINOIS**

v.

**ABC CORP.**

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)  
) Mimi Brin  
) Administrative Law Judge

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**RECOMMENDATION FOR DISPOSITION**

**Appearances:** Ms. Jane Doe, on behalf of ABC CORP.; Mr. Shepard Smith, Special Assistant Attorney General, on behalf of the Illinois Department of Revenue

**Synopsis:**

This matter comes on for hearings pursuant to taxpayer's, ABC CORP. (hereinafter "ABC" or the "Taxpayer") protest to Notice of Assessment SA 0002682707019 (hereinafter the "NOA") issued by the Department of Revenue (hereinafter the "Department") assessing a late payment penalty as a result of taxpayer's late payment of its quarter monthly tax obligation for the first December payment due on December 7, 1999.

The issue is whether there exists reasonable cause to abate the statutory penalty assessed by the Department in this matter. At hearing, Ms. Jane Doe appeared and testified on behalf of the taxpayer. Following the submission of all evidence and a review of the record, it is recommended that this matter be resolved in favor of the

taxpayer. In support of that recommendation, I make the following findings of fact and conclusions of law:

**Findings of Fact:**

1. On February 17, 2000, the Department issued to the taxpayer a late payment penalty assessment, NOA SA 0002682707019, as a result of taxpayer's late payment of its first quarter monthly payment for Retailers' Occupation Tax (hereinafter "ROT") for December, 1999. Department Ex. No. 1
2. The payment at issue was due to be filed on December 7, 1999. Department Ex. No. 2;
3. The payment at issue was filed on December 11, 1999, a fact conceded by taxpayer. Tr. p. 25
4. Taxpayer filed its ROT returns on a monthly basis prior to November, 1999, when it began making these payments on a quarter monthly basis. Tr. pp. 9-10
5. In November 1999, ABC's ROT payments were due on 11/8 (Monday); 11/15 (Monday); 11/22 (Monday); and 11/30 (Tuesday). Department Ex. No. 2 These payments were timely made. Id.
6. Taxpayer's December 1999 payments were due on 12/7 (Tuesday); 12/15 (Wednesday); 12/22 (Monday). Department Ex. No. 2 Each payment except for 12/7 was timely made. Id.

7. The Department provided taxpayer with coupons for each payment, with the due date of such payment shown on the face of the coupon.

Department Ex. No. 2

**Conclusions of Law:**

The Department assessed a penalty against ABC based upon taxpayer's failure to timely pay its quarter monthly ROT liability due 12/7, taxpayer having made this payment on 12/11. The penalty was assessed pursuant to section 3-3 of the Uniform Penalty and Interest Act, 35 ILCS 735/3-1 *et seq.* (hereinafter the "UPIA"). The UPIA provides that penalties can be abated upon a showing of reasonable cause (35 ILCS 735/3-8) and taxpayer makes its request based upon this provision. Department regulation states that reasonable cause is to be determined on a case by case basis taking into account all of the facts and circumstances. 86 Ill Adm. Code, ch. I, sec. 700.400(b). This provision indicates that it must be determined to what extent the taxpayer made a good faith effort to determine the correct tax liability and subsection (c) provides that a taxpayer is considered to have made a good faith effort if it uses ordinary business care and prudence. "A determination of whether a taxpayer exercised ordinary business care and prudence is dependent upon the clarity of the law or its interpretation and the taxpayer's experience, knowledge, and education." 700.400(c)

Ms. Doe testified that she has been doing taxpayer's books full time since 1993, that the taxpayer had always been on the monthly payment system during that entire time until November 1999, when the state changed it to quarter monthly payments. Tr. pp. 9-10 She also stated that when taxpayer was on the monthly system, its payments were due

on the same date each month, and that the dates for filing on the quarter monthly system differ each month, not only to the date due, but also as to the day of the week. Tr. p. 10 Ms. Doe confessed that as a mother of a young child and while pregnant with another, she simply could not get the new payment system straight, and, as a result, the company has made changes so that errors would no longer occur.<sup>1</sup> Tr. pp. 10-11

Illinois statute prescribes the circumstances that require quarter monthly ROT payments as well as the dates by which such payments are to be made. 35 ILCS 120/3 Those dates are “before the 7<sup>th</sup>, 15<sup>th</sup>, 22<sup>nd</sup> and the last day of the month during which such liability occurred.” Id. The November 1999 dates were the 8<sup>th</sup>, 15<sup>th</sup>, 22<sup>nd</sup>, and the 30<sup>th</sup>. Department Ex. No. 2 These dates are consistent with statute.<sup>2</sup> Likewise, the payment due dates for December 1999 were the 7<sup>th</sup>, 15<sup>th</sup>, 22<sup>nd</sup> and January 3, 2000. Id. Again, these dates are consistent with statute. See footnote 2 (payment due dates falling on Saturday, Sunday or holidays) Thus, the statute provides for consistency as to the date each quarter monthly payment is due, just as a monthly filer was to file its return and make its payment by the 20<sup>th</sup> day of the month following the sales activity. 35 ILCS 120/3 The uncontroverted evidence of record also provides that the payment coupons show the payment due dates on their face. Department Ex. No. 2 (RR-3 Sales and Use Tax Quarter-Monthly Payment form for 12/7/99 payment)

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<sup>1</sup>The Department’s Ex. No. 2 shows that taxpayer also filed two January 2000 payments late – the one due on 1/18 was filed 1/20 and the one due on 1/31 was filed 2/1. Ms. Doe testified that she had difficulty with the quarter monthly payments for November, December and January. Tr. pp. 10-11, 13 I note that the only issue for hearing is the December late payment, that the evidence of record shows that to be the first late payment following the change to quarter monthly filing.

<sup>2</sup> November 7, 1999 fell on a Sunday. Department regulation provides:

If the due date for any return or other report or payment falls on Saturday, Sunday or a Holiday, such due date shall be considered to be the next business date either for the purpose of submitting such return or other report or payment by mail or for the purpose of submitting such return or other report or payment in person.

86 Ill. Adm. Code, ch. I, sec. 130.1205 Therefore, the correct date for payment was 11/8.

Although Ms. Doe complained that the day of the week that the quarter monthly payments were due was also inconsistent, the 20<sup>th</sup> day of each month also falls on varying days of the week, i.e. January 20, 1999 was a Wednesday, February 20 was a Saturday (payment due on the 22<sup>nd</sup>), April 20 was a Tuesday and May 20 was a Thursday.

It would appear, then, that quarter monthly payments of ROT liabilities are not so different from monthly payments. However, pursuant to the regulation, I also consider taxpayer's experience and knowledge. In so doing, I bear in mind that ABC paid its ROT liability monthly for many years prior to being changed to the quarter monthly system by the Department in the November prior to this late payment, and, that Ms. Doe's entire experience with ROT payments was with the monthly filings until the change. The record does not speak to Ms. Doe's professional or educational credentials, however, she was accompanied at the hearing, by Mr. John Doe, who identified himself as taxpayer's C.P.A, but who did not testify. Tr. p. 4 It is not unreasonable to conclude that Ms. Doe is not a professional accountant. There is also nothing in the record that shows that ABC's history of filing and payment was anything other than timely prior to the instant late payment. As a result of the above, I conclude that there is reasonable cause to abate the penalty at issue, that results from ABC's late payment of its first December 1999 quarter monthly ROT liability.

**WHEREFORE**, for the reasons stated above, it is my recommendation that the late penalty assessment number 00 00000000000000, based upon ABC's first quarter monthly payment for the month of December 1999, be abated.

11/20/00

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Mimi Brin  
Administrative Law Judge